

No. 13524

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United States  
Court of Appeals  
for the Ninth Circuit.

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UNITED STATES OF AMERICA,

Appellant,

vs.

MURIEL FIRTH, Administratrix of the Estate of  
Martin W. Firth, Deceased,

Appellee.

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Apostles on Appeal

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Appeal from the United States District Court for the  
Northern District of California,  
Southern Division.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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For Appellee.





In the United States District Court for the Northern  
District of California, Southern Division

In Admiralty No. 25428 E

MURIEL FIRTH, Administratrix of the Estate of  
MARTIN W. FIRTH, Deceased,

Libelant,

vs.

UNITED STATES OF AMERICA,

Respondent.

SEAMAN'S ADMINISTRATRIX  
LIBEL IN PERSONAM

Comes now libelant and for cause of action against  
respondent alleges:

I.

That libelant brings and maintains this action pursuant to the general admiralty and maritime law and jurisdiction of this court and also pursuant to the provisions of 41 Stat. 537, 46 U.S.C.A. Sec. 761, commonly known as Death on the High Seas by Wrongful Act; pursuant to the provisions of 41 Stat. 525, 46 U.S.C.A. Sec. 741, commonly known as the Suits in Admiralty Act; and pursuant to 43 Stat. 1112, 46 U.S.C.A. Sec. 781, commonly known as the Public Vessels Act.

II.

That libelant elects to take advantage of the provisions of 28 U.S.C. 1916 and to proceed herein without pre-payment of costs and fees and without security therefor.

## III.

That libelant is the duly qualified and regularly appointed and acting administratrix of the estate of Martin W. Firth, deceased.

## IV.

That at all times herein mentioned respondent, United States of America was and now is a nation sovereign, and was the owner and operator of that certain motor vessel "Clarksdale Victory"; that said vessel "Clarksdale Victory" at all times herein mentioned was engaged, operated and navigated by respondent in the United States Transport Service as a United States Army Transport; that said Martin W. Firth, deceased, at all times herein mentioned was employed on and aboard said vessel as a seaman.

## V.

That on or about the 24th day of November, 1947, at approximately the hour of 10:00 p.m. said vessel "Clarksdale Victory," owned, maintained, managed, controlled, operated and navigated by respondent, its agents, servants and employees, was proceeding in a general southerly direction at a point approximately 140 miles southwest of Ketchikan, Alaska; that at said time and place said vessel was in a dangerous, defective, unsafe and unseaworthy condition; that at said time and place respondent by and through its agents, servants and employees, the Master and officers of said vessel, negligently and carelessly maintained, managed, controlled, operated and navigated said vessel; that

as a direct and proximate result of said dangerous, defective, unsafe and unseaworthy condition of said vessel and the said carelessness and negligence of respondent, its agents, servants and employees said vessel was caused to and did run aground and as a result thereof sank.

#### VI.

That as a direct and proximate result of the aforesaid unseaworthiness, negligence and carelessness and sinking of said vessel said Martin W. Firth was drowned.

#### VII.

That at the time of his death, said Martin W. Firth was an able-bodied man twenty-three (23) years of age and was then earning and capable of earning the sum of Four Hundred Twenty Dollars (\$420.00) a month.

#### VIII.

That this action is brought by libelant as administratrix of the estate of said Martin W. Firth, deceased, for the benefit of Muriel Firth, the surviving spouse of deceased, and Barbara Louise Firth, a minor, the surviving daughter of deceased, both of whom were dependent upon deceased for their maintenance and support; that as a result of said wrongful death of said Martin W. Firth, deceased, said beneficiaries have been and now are deprived of the services, earnings and support and the love, affection and care and guidance of deceased; that by reason of the foregoing, libelant

has been damaged in the sum of One Hundred Thousand Dollars (\$100,000.00).

Wherefore, libelant prays that process in due form of law according to the course of this Honorable Court and in causes of admiralty and maritime jurisdiction may issue against said respondent, and that citation in personam may issue against said respondent, and that it be cited and required to appear and answer all and singular the matters aforesaid, and that this Honorable Court may be pleased to decree the payment by respondent of the sum of One Hundred Thousand Dollars (\$100,000.00) general damages, plus costs of suit herein, and for such other and further relief as is meet and just in the premises.

WILLIAM J. O'BRIEN,  
SAMUEL L. CRIPPEN,  
CREIGHTON FLYNN,  
HAROLD A. SEERING,

By /s/ WILLIAM J. O'BRIEN,  
Attorneys for Libelant.

Duly verified.

[Endorsed]: Filed May 26, 1949.

[Title of District Court and Cause.]

ANSWER

Now comes respondent United States of America and answers the libel on file herein as follows:

I.

Respondent denies the allegations of Article I.

II.

Respondent is not required to answer the allegations of Article II.

III.

Respondent has no information or belief as to the allegations of Article III and demands strict proof thereof.

IV.

Respondent admits the allegations of Article IV.

V.

Respondent admits that on or about the 24th day of November, 1947, at approximately the hour of 10:00 p.m. the "Clarksdale Victory," owned, maintained, managed, controlled, operated and navigated by respondent, its agents, servants and employees, was proceeding in a general southerly direction at a point approximately 140 miles southwest of Ketchikan, Alaska. Respondent denies the remaining allegations of said Article V.

VI.

Respondent denies the allegations of Article VI.



## VII.

Respondent denies the allegations of Article VII.

## VIII.

Respondent denies the allegations of Article VIII, and particularly that libelant has been damaged in the sum of \$100,000.00 or any part thereof.

As and for a First Separate and Distinct Defense to the Libel Filed Herein, Respondent Alleges:

## I.

The District Court does not have jurisdiction under the Public Vessels Act, 1925 (46 U.S.C. 781) or a claim by the beneficiary, or any other person, arising out of the death of Martin W. Firth, a civilian member of the crew of a public vessel of the United States of America, said death having occurred during the performance by the deceased of his duties as such member of the crew on board such public vessel, the United States of America not having consented to be sued for such a claim.

As and for a Second Separate and Distinct Defense to the Libel Filed Herein, Respondent Alleges:

## I.

That the deceased, Martin W. Firth, was on the 24th day of November, 1947, employed by respondent as a seaman on the USAT Clarksdale Victory, pursuant to the terms and conditions of a certain contract for service as a civilian employee of the War Department.

## II.

That under said contract of employment the said Martin W. Firth was at the time of his alleged death a civil service employee of respondent United States of America, by and through the War Department, being employed upon a public vessel of the United States of America, namely, the USAT Clarksdale Victory. That as such civil service employee Martin W. Firth was an officer of the United States of America, and the remedy of libelant for benefits for the death of said Martin W. Firth is governed by the provisions of Section 751 of Title 5 of the United States Code, which said statute is exclusive.

As and for a Third Separate and Distinct Defense to the Libel Filed Herein, Respondent Alleges:

## I.

Respondent refers to the allegations of Articles I and II of the Second Separate and Distinct Defense, hereinabove, and incorporates and makes the same a part hereof.

## II.

Under the terms of the said contract of employment of Martin W. Firth by the War Department, the War Department agreed to provide benefits for injury or death of a member of the crew of said vessel, subject to the agreed conditions that where such person, or the beneficiary of such person, also becomes entitled to any statutory benefit on account of such death, such person or any such beneficiary

shall be entitled only (1) to the benefit provided by the War Department, or (2) to such statutory benefit. Any benefits received under either the War Department provisions or the statutory benefit shall be set off one as against the other.

### III.

Muriel Firth, the widow of Martin W. Firth, in accordance with the terms of the said contract of employment of Martin W. Firth by the War Department, and with the rules and regulations prescribed by the War Department, has elected to receive the benefits provided by the War Department in lieu of statutory benefits and has filed a claim with the War Department for the payment of said benefits.

As and for a Fourth Separate and Distinct Defense to the Libel Filed Herein, Respondent Alleges:

#### I.

Respondent refers to the allegations of Article I of the Second Separate and Distinct Defense, hereinabove, and incorporates and makes the same a part hereof.

#### II.

That on the said 24th day of November, 1947, the said USAT Clarksdale Victory stranded on Hippa Island in Southern Alaskan waters of the Pacific Ocean, solely by reason of perils of the sea, and become a total loss. That in the event the said Martin W. Firth met his death on said 24th day of November, 1947, said death was caused solely by perils of the sea, which was a risk assumed by



said Martin W. Firth under his contract of employment, for which respondent is not liable.

Wherefore, respondent prays that the libel be dismissed and that respondent have its costs of suit and such other and further relief as may be meet in the premises.

/s/ FRANK J. HENNESSY,  
United States Attorney,

/s/ C. ELMER COLLETT,  
Assistant U. S. Attorney,  
Proctors for Respondent.

[Endorsed]: Filed January 14, 1950.

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In the District Court of the United States for the  
Northern District of California, Southern  
Division

Admiralty Nos. 25081, 25083, 25123, 25266,  
25257, 25312, 25413 and 25428

GENE GERARDO, as Administrator of the Estate  
of AQUILINO BANGLOY, Deceased,  
Libelant,

vs.

UNITED STATES OF AMERICA,  
Respondent,  
And Nine Companion Cases.

### MEMORANDUM OPINION

Libelants, heirs of several seamen and two work-a-ways on board the *Clarksdale Victory*, seek to recover damages against respondent for the negli-

gent operation of the ill-fated vessel. On November 24, 1947, the Clarksdale Victory ran on the reefs off of Hippa Island, Queen Charlotte Group, B. C. There were but four survivors.

At the lengthy trial, evidence established the fact that the vessel left Alaska on November 22, 1947. On the morning of November 23, it set a course of 132° and shortly thereafter altered such course to 134° at Hinchinbrook. The navigating officer maintained this course until shortly before the disaster which caused the ship to perish. The primary question for the Court to consider in ascertaining negligence is why the ship continued on the southerly course as long as it did and in the manner it did.

On November 24th about 8:30 p.m. the Clarksdale Victory struck an object variously described as a reef or a log. After such striking, the ship altered its course to 145°. Within a period of approximately twenty minutes the vessel crashed on the rocks and reefs off of Hippa Island and sank soon thereafter.<sup>1</sup>

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<sup>1</sup>Chronology, Last Watch

8:00 p.m.—Mr. Rasmussen, Third Officer, relieves Mr. Wolfe; wind: between a 4 and 6; visibility: 8-10 miles every direction. Wolfe remains to take bearings.

8:15 p.m. “or shortly before 8:30”—Visibility drops one mile to zero; weather conditions change; wind “appears to increase”; Rasmussen notifies master; speed not reduced; still 15-15½ knots.

8:25-8:30—Wolfe still in chartroom; apparently does not go to bridge; has no idea of lowered visi-

During his pursuance of a course of dead reckoning heading South at  $134^{\circ}$ , the navigating officer had few radio fixes and was unable to ascertain the ship's specific location. The master believed, by reason of past experience in the same waters, that he was 15 to 25 miles from land at the time of the actual crash. As events turned out, landward drift or set had taken the ship these many miles off of its intended course and placed it in dangerous waters. After 8 p.m. of the evening of the crash, visibility was cut from good (up to 10 miles) to poor (1 mile down to 500 yards) by reason of fog conditions. During the period of minimum visibility, the vessel did not cut its speed from its regular  $15\frac{1}{2}$  knots to  $16\frac{1}{2}$  knots, nor did it exercise other precautions commensurate with weather and other conditions.

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bility when he leaves for his quarters. His testimony as to time of departure—"a litle short of a half hour after 2000." Until this time the object had not been struck.

8:35-8:39—Vessel strikes object on bottom followed by decided snap rolls, etc.; Captain now on bridge. Tells Rasmussen to lash down instruments in charthouse. Object later described as reef or rocks, causing vessel to shudder.

8:40—Wolfe now returns to chartroom from his quarters, partially dressed; attempts to use fathometer. States he came up because unusual violence in roll of ship.

8:40-8:45—Wolfe states change of course came 5-10 minutes before 2050. Course change  $11^{\circ}$  to  $145^{\circ}$ ; speed still about  $15-15\frac{1}{2}$  knots, but course change came after Wolfe returned, not before 8:40.

8:50—Vessel crashes with violence upon the rocks 500 or less yards from the shore.

Libelants review and summarize the series of failures on the part of the officers of the ship which led directly or indirectly to the disaster. In addition to their failure to cut speed and otherwise comply with statutory regulations governing operations in fog, they made no use of the lead to ascertain depth. Nor did the officers use the fathometer until the very last moment. They failed to make allowance for set or drift of their ship during the period of navigating on a fixed course. Further, at the very outset of their voyage they failed to lower their booms. Such failure created a condition which made radio beacon reception less accurate than it otherwise would have been.

The ship's officers, after receiving the warning of striking an object some 20 minutes before the final stranding and noting heavy swells and wave conditions indicative of nearness to land, failed to turn hard right and head straight to sea.

Respondent seeks to rebut libelants' showing of negligence by observing that the standard of care imposed upon a master and his fellow officers is not the standard of hindsight wisdom, but rather that of the reasonable man under the circumstances at the time of his control of the vessel. Analyzing each act of omission or commission, respondent attempts to explain why the captain and his assistants did what they did and omitted to do those things which libelants contend were crucial for the proper navigation of the *Clarksdale Victory*.

The Court is of the view that the several elements of omission established by the evidence combine



to characterize the master's control of his vessel as negligent under all of the circumstances. This is especially true after the vessel struck the reef or "log" and was forewarned of likely disaster unless extreme precaution should be taken. Despite heavy fog, ground swells, lack of knowledge as to exact location, and ignorance as to depth, respondent failed to slow down or head to sea. Such failures led directly to the sinking of the Clarksdale Victory. Respondent must be held liable for the loss of lives of the members of the crew and the work-a-ways.

In view of the Court's finding that respondent was negligent in its handling of the Clarksdale Victory immediately prior to the striking of land, the question of damages must be answered. The several individuals who are seeking relief form a mixed group which must be treated, in most cases, upon an individual basis.

Before the Court assesses damages, it will make two preliminary observations:

(1) Recovery is limited to actual pecuniary loss; there may be no award for consortium. 46 U.S.C.A. 688; 45 U.S.C.A. 51; *Devine v. Chicago Railroad*, 239 U.S. 52; *Belzoni Hardwood Lumber Co. v. Langford*, 127 Miss. 234; *Berry v. St. Louis RR.*, 26 S. W. (2) 988.

(2) In the case of the deceased seaman with the exception of Carroll W. Key whose heirs are seeking damages, the Court award is in excess of and in addition to the \$5,000 war risk insurance policy which has been paid. With respect to decedents

Firth and Webb, no war risk insurance policy is involved.

The administrator of the estate of Aquilino Bangloy is awarded the sum of \$1,000 damages.

The administrator of the estate of Pablo Gonzales is awarded the sum of \$1,200 damages.

The administrator of the estate of James L. Starkey is awarded the sum of \$5,500 damages.

The administrator of the estate of Carroll W. Key is awarded the sum of \$10,000 damages.

The administratrix of the estate of Martin W. Firth is awarded the sum of \$15,000 damages.

The administratrix of the estate of Dallas Warwick Webb is awarded the sum of \$16,000.

The administratrix of the estate of James Anthony Kaye is awarded the sum of \$9,000.

With respect to the administratrix of the estate of Samuel R. Marteen, the Court finds that such administratrix, Virginia Marteen, elected to receive an award of compensation under the Employees' Compensation Act and that she received monthly compensation checks for many months after making such election with knowledge of her rights. Under the facts of the case, Mrs. Marteen is precluded from suing respondent for damages (*Gibbs v. United States*, 94 F. S. 586). Accordingly, the Court makes no award in favor of libelant Virginia Marteen and the libel is dismissed.

Counsel for libelants to whom damages have been awarded will prepare findings of fact and conclusions of law in accordance with this opinion.

Dated: November 14, 1951.

GEORGE B. HARRIS,  
United States District Judge.

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[Title of District Court and Cause.]

FINDINGS OF FACTS AND  
CONCLUSIONS OF LAW

The above libel, consolidated with seven (7) other libels, Numbers 25081 G, 25083 R, 25123 G, 25266 R, 25267 H, 25312 H and 25413 R respectively, came on regularly for trial and hearing before the Court on March 6, 1951, all parties appearing by and through their respective proctors, and thereafter was continued for further hearings pursuant to orders of the Court, duly made and entered, said hearings continuing intermittently from March 6, 1951, until June 21, 1951, and oral and documentary evidence having been offered, introduced and received, and the matter having been argued, briefed and submitted, the Court, being fully apprised in the premises, makes the following findings of fact and conclusions of law.

Findings of Fact

I.

That on November 24, 1947, and all of the times hereinafter mentioned, Martin W. Firth, deceased,

was a civilian in the employ of respondent as a seaman, to wit, a work-a-day, and was upon and aboard the United States Army Transport (U.S.A.T.) "Clarksdale Victory," a vessel owned and operated by respondent and was engaged in the course and scope of his employment for and on behalf of respondent when said vessel ran aground, stranded and broke up, the cause of said stranding and breaking of said vessel and the resultant death of decedent by reason thereof being hereinafter more particularly set forth.

## II.

That heretofore, to wit on the 8th day of March, 1948, after proceedings regularly and duly had for such purpose, libelant herein was duly appointed administratrix of the estate of Martin W. Firth, deceased, by the Superior Court of the State of Washington, in and for the County of Pierce, and thereafter was duly qualified as such administratrix and issued letters of administration and thereupon entered upon the administration of said estate as provided in the order of said Court, and ever since has been and now is the appointed and duly qualified and acting administratrix of said decedent with full right and powers to bring this cause of libelant.

## III.

That on November 24, 1947, and at all of the times herein mentioned the United States, a sovereign nation, and respondent herein, was the owner and operator of the aforementioned U.S.A.T. "Clarksdale Victory" and used and operated said



vessel in the operations, business and affairs of the Water Division, United States of America Transportation Corporation.

## IV.

That on November 24, 1947, between the hours of 8:00 p.m. and 8:50 p.m. and prior thereto, and while said vessel was being operated, navigated and sailed in a general southerly direction upon the waters of the Pacific Ocean enroute from Whittier, Alaska, to Seattle, Washington, and following the "outside route," respondent, in the face of fog, adverse weather and impaired and limited visibility conditions, negligently failed to exercise ordinary care and prudence in the use, operation, navigation and sailing of said vessel; negligently failed to reduce the forward speed of said vessel from its regular and continued speed ahead of  $15\frac{1}{2}$  to  $16\frac{1}{2}$  knots per hour; negligently failed to exercise care and precautions commensurate with prevailing weather and other conditions existing at the time; negligently failed to comply with statutory requirements, regulations and rules governing the use, operation, movement and navigation and sailing of said vessel in and under fog and adverse weather conditions; negligently failed to use and properly use all of the available navigation aids, instruments and equipment aboard said vessel and particularly failed to use the lead line to ascertain the depth of the ocean and failed to use the fathometer until shipwreck and stranding was imminent; negligently failed to make due and proper or any allowance for the set or drift of said vessel inward toward land-

fall during the period of navigation, movement and sailing of said vessel on a fixed course; negligently failed to lower and cradle certain booms which affected, interfered with and made less accurate the radio direction finder and radio beam and beacon reception available to said vessel; negligently failed to apprise, evaluate and heed the forewarning of danger and disaster when the vessel struck a reef or log in or under the surface of the ocean approximately 20 minutes before the eventual stranding and break-up of said vessel; negligently failed to slow speed, stop or change or swerve course and head out to open sea and away from the shoreline and landfall despite heavy fog, ground swells and lack of knowledge as to the fix and exact position and location of said vessel and the ignorance of the depth of the ocean upon which said vessel was there and then sailing.

#### V.

That solely by reason of the aforesaid negligent acts of omission, the Master's supervision and control of the vessel was negligent under all circumstances and conditions, and as a direct and proximate consequence and result thereof, said vessel, the U.S.A.T. "Clarksdale Victory," was allowed and permitted to and did run aground upon the reefs and shoals, rocks and shoreline of Hippa Island, Queen Charlotte Group, British Columbia, at which time, place and point said vessel broke asunder, proximately bringing about and causing the death of said Martin W. Firth, and other seamen who were then and there aboard said vessel.

## VI.

That said Martin W. Firth, deceased, died on the 24th day of November, 1947, by reason of the afore-said premises and circumstances, and left surviving his spouse, Muriel Firth, libelant herein, of the age of 22 years, and a minor child, to wit, a daughter named Barbara Louise Firth of the age of 1 year, who were and are the sole surviving heirs at law of said deceased; that said surviving heirs of deceased were dependent upon deceased for aid, maintenance and support and deceased contributed to the aid, maintenance and support of said surviving heirs; that by reason of the death of said deceased, said surviving spouse and minor child of deceased have been deprived of his said aid, maintenance and support and have suffered and will continue to suffer actual pecuniary loss and damage by reason thereof and will be deprived of said services, aid, maintenance and support of said decedent for the balance of their natural lives.

## VII.

That at the time of his death, said Martin W. Firth, deceased, was of the age of 23 years, able bodied and in good physical and mental health and condition and was capable of working and earning and did work and earn income for the support of himself and family.

## VIII.

That no compensation, war risk or other insurance benefits were or have been paid by the United States Government to the estate of said Martin W.

Firth, deceased, or to said surviving spouse or minor child of deceased, because of the death of said deceased caused as aforesaid and no compensation, war risk or other insurance is involved and the amount of damages herein awarded includes such benefits if the same were allowed.

### IX.

That Libelant as administratrix of the estate of said Martin W. Firth, deceased, by reason of the death of said deceased caused as aforesaid, is entitled to damages in the sum of Fifteen Thousand Dollars (\$15,000.00).

### Conclusions of Law

As conclusions of law from the foregoing facts, the Court finds:

#### I.

That the Court has jurisdiction of the above-entitled libel under the general admiralty and maritime law and other applicable laws and statutes of the United States pertaining hereto, and specifically, the Public Vessels Act, 46 U.S.C. 781, and the suits in Admiralty Act, 46 U.S.C.A. 741.

#### II.

That respondents negligently maintained, used, supervised, operated, navigated and sailed the aforesaid vessel, the U.S.A.T. "Clarksdale Victory" at the time, place and hour of the stranding and breaking up of said vessel and the resulting death of Martin W. Firth, deceased, as hereinabove more

particularly set forth, and that such negligence of respondent contributed proximately to his death.

III.

That libelant, Muriel Firth, as the administratrix of the estate of Martin W. Firth, deceased, is entitled to judgment against respondent in the sum of Fifteen Thousand Dollars (\$15,000.00) plus allowable costs incurred herein.

Let Decree and Judgment Be Entered Accordingly.

Dated: March 7, 1952.

/s/ GEORGE B. HARRIS,  
Judge of the United States  
District Court.

Receipt of copy acknowledged.

Lodged February 28, 1952.

[Endorsed]: Filed March 7, 1952.



In the District Court of the United States for the  
Northern District of California, Southern Di-  
vision

(Admiralty) Number 25428 E

MURIEL FIRTH, Administratrix of the Estate of  
MARTIN W. FIRTH, Deceased,

Libelant,

vs.

UNITED STATES OF AMERICA,

Respondent.

### JUDGMENT

The above-entitled libel came on regularly for trial on March 6, 1951, in the above-entitled court, before the Honorable George B. Harris, judge, presiding, sitting without a jury, all parties appearing by and through their respective proctors, Crippen & Flynn, Tacoma, Washington, by Samuel Crippen and William J. O'Brien, 248 Battery Street, San Francisco, California, appearing as proctors for libelant herein, and Chauncey F. Tramutolo, United States Attorney, Keith R. Ferguson, Special Assistant to the Attorney General, Howard J. Bergman, Special Assistant to the United States Attorney, Stewart Harrison, Attorney, Department of Justice, Charles Elmer Collett, Assistant United States Attorney, appearing as proctors for respondent, and thereafter was continued for further trial pursuant to orders of the Court, duly made and entered, said hearings continuing intermittently from said March 6, 1951, until June 21, 1951, and

evidence, both oral and documentary, having been introduced, written briefs having been filed and the matter having been submitted for decision, and the Court having heretofore made and caused to be filed its written findings of fact and conclusions of law,

It Is Ordered, Adjudged and Decreed that libelant herein, Muriel Firth, as administratrix of the estate of Martin W. Firth, deceased, recover from respondent Fifteen Thousand (\$15,000.00) Dollars, together with costs amounting to \$397.93.

Dated March 7, 1952.

/s/ GEORGE B. HARRIS,  
United States District Judge.

[Endorsed]: Filed March 7, 1952.

Entered March 10, 1952.

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In the United States District Court for the Northern District of California, Southern Division

In Admiralty—No. 25428-E

MURIEL FIRTH, Administratrix of the Estate of  
MARTIN W. FIRTH, Deceased,  
Libelant,

vs.

UNITED STATES OF AMERICA,  
Respondent.

No. 25081-G

GENE GERARDO, as Administrator of the Estate  
of AQUILINO BANGLOY, Deceased,  
Libelant,

vs.

UNITED STATES OF AMERICA,  
Respondent.

No. 25083-R

ROMUALDO G. QUIMPO, as Administrator of  
the Estate of PABLO GONZALES, Deceased,  
Libelant,

vs.

UNITED STATES OF AMERICA,  
Respondent.

No. 25123-G

ELIZABETH STELLA KAYE, as Administratrix  
of the Estate of JAMES ANTHONY KAYE,  
Deceased,  
Libelant,

vs.

UNITED STATES OF AMERICA,  
Respondent.

No. 25266-R

LEE STARKEY, as Administrator of the Estate  
of JAMES L. STARKEY, Deceased,  
Libelant,

vs.

UNITED STATES OF AMERICA,  
Respondent.



No. 25413-R

IDA ELLEN WEBB, as Administratrix of the  
Estate of DALLAS WARRICK WEBB, De-  
ceased,

Libelant,

vs.

UNITED STATES OF AMERICA,

Respondent.

MOTION TO VACATE JUDGMENTS AND FOR  
DISMISSAL OF LIBELS

Comes now the respondent, United States of America, and moves the Court to vacate the judgments entered in the above-captioned causes on the ground that the United States Supreme Court, subsequent to the entry of said judgments and on May 26, 1952, rendered its decision in the cases of Konrad G. Johansen v. United States of America, Supreme Court No. 401, and Samuel Mandel, Administrator, v. United States, Supreme Court No. 414, in which it held that the Federal Employees Compensation Act is the exclusive remedy for civilian seamen on public vessels, which is adverse to the decision of this Court in rendering judgments in the above-captioned causes.

I.

That judgments in the above-captioned causes were signed by the above-entitled Court on March 7, 1952, and entered on March 10, 1952, and that the time for appeal from said judgments does not expire

until 90 days thereafter, and that said judgments have therefore not become final.

## II.

That this Court in its findings of fact, upon which said judgments were based, found that the deceased in each case was a civilian employed by the respondent as a seaman on the United States Army Transport, *Clarksdale Victory*, a public vessel of the United States, a sovereign nation, and as such was a member of the crew of said vessel and was engaged in the course and scope of his employment upon the date and approximate hour of his death.

## III.

That the United States Supreme Court in its decision in the said *Johansen and Mandel* cases held:

“All in all we are convinced that the Federal Employees Compensation Act is the exclusive remedy for civilian seamen on public vessels.”

## IV.

That the time in which respondent may appeal from such judgments expires on or about June 5, 1952, and that unless said judgments are vacated prior to that time it will be necessary for respondent to file its appeal to the Court of Appeals for the Ninth Circuit.

## V.

That under the decision of the United States Supreme Court in the said *Johansen and Mandel* cases, the Federal Employees Compensation Act is

the exclusive remedy of the libelants and their actions herein are barred and the said judgments so entered herein are void in that the Court had no power to grant the relief awarded in said judgments, and said judgments should be vacated and the libels dismissed.

Wherefore, respondent prays that this Court vacate each of the judgments entered in the above-entitled causes and that the libels therein be dismissed.

/s/ CHAUNCEY TRAMUTOLO,  
United States Attorney;

/s/ KEITH R. FERGUSON,  
Special Assistant to the  
Attorney General;

/s/ J. STEWART HARRISON,  
Attorney, Department of  
Justice.

#### NOTICE OF HEARING OF MOTION

To Libelants Above Named and to Messrs. Belli, Ashe & Pinney and Messrs. William J. O'Brien and Samuel L. Crippen, Creighton Flynn, and Harold A. Seering, Their Proctors:

You and Each of You will please take notice that on Monday, the 2nd day of June, 1952, in the courtroom of the Honorable George B. Harris, Judge of the above-entitled Court, at 10:00 a.m. or as soon thereafter as counsel can be heard, respondent will

call up for hearing the above motion to vacate said judgments and for dismissal of the libels.

Dated May 29th, 1952.

/s/ CHAUNCEY TRAMUTOLO,  
United States Attorney;

/s/ KEITH R. FERGUSON,  
Special Assistant to the  
Attorney General;

/s/ J. STEWART HARRISON,  
Attorney, Department of Justice, Proctors for Re-  
spondent.

#### Points and Authorities

Konrad G. Johansen v.

United States of America, U. S. Supreme  
Court No. 401 (not yet reported), October  
term, 1951;

Samuel Mandel, Administrator, vs.

United States, U. S. Supreme Court No.  
414 (not yet reported), copy of Opinion  
being attached hereto;

United States vs. Turner,  
47 F.(2d) 86 (CA 8th);

Windsor vs. McVeigh,  
93 U. S. 274, 282.

McLellan vs. Automobile Insurance Co. of  
Hartford, Conn., et al. (CA 9th), 80 F.(2d)  
344.

Receipt of copy acknowledged.

[Endorsed]: Filed May 29, 1952.

[Title of District Court and Cause.]

ORDER DENYING MOTION TO VACATE  
JUDGMENTS AND TO DISMISS LIBELS

The Government has moved the Court to vacate its judgments and to dismiss the libels in the above-entitled actions. It relies upon the recent Supreme Court decision in *Johansen vs. United States* and *Mandel vs. United States*, Nos. 401 and 414, United States Supreme Court, decided May 26, 1952.

It is to be noted that the Supreme Court decision in the *Mandel* and *Johansen* cases is not final; counsel have until June 10th to file their petitions for rehearing. The five to four decision of the Supreme Court suggests that a different result might follow if such petition for rehearing is granted. The court observes that two of the libelants in the instant case were not Civil Service employees on a government vessel, but were work-a-ways utilizing the *Clarksdale Victory* as a means of transportation from Alaska to the United States. The Supreme Court ruling, as we view it, does not hold that such work-a-ways are covered exclusively by the Federal Employees' Compensation Act. Thus it would be inappropriate for the Court to vacate its judgment as to these libelants quite apart from the remaining libelants.

In the light of the entire record, this Court believes that the motion to vacate judgments and to dismiss the libels is prematurely brought, and in at least two instances is not well taken under the ruling of the Supreme Court as it now stands.



Accordingly, It Is Oredered that the motions to vacate judgments and to dismiss be, and the same hereby are denied and each of them is denied.

Dated June 3, 1952.

GEORGE B. HARRIS,  
United States District Judge.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given that the respondent, United States of America, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final decree made and entered herein on March 10, 1952, in favor of the above-named libelant, and also from the order entered June 3, 1952, denying the Motion of Respondent to vacate said judgment and to dismiss the libel.

/s/ CHAUNCEY TRAMUTOLO,  
United States Attorney;

/s/ KEITH R. FERGUSON,  
Special Assistant to the  
Attorney General;

/s/ J. STEWART HARRISON,  
Attorney, Department of Justice, Proctors for Respondent.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 5, 1952.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, It Is Ordered that the appellant, United States of America, may have to and including September 3, 1952, to file the Apostles on Appeal in the United States Court of Appeals for the Ninth Circuit.

Dated July 15, 1952.

/s/ GEORGE B. HARRIS,  
United States District Judge.

It Is Hereby Stipulated and Agreed that the foregoing Order Extending Time to Docket may be issued by consent of all parties, and receipt of same is hereby acknowledged this 14th day of July, 1952.

WILLIAM J. O'BRIEN,  
SAMUEL L. CRIPPEN,  
CREIGHTON FLYNN, and  
HAROLD A. SEERING,  
Proctors for Libelant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 15, 1952.

[Title of District Court and Cause.]

### ASSIGNMENT OF ERRORS

In support of its appeal herein, respondent and appellant United States of America hereby assigns error in the proceedings, orders, and final decision and Decree of the District Court in the above-entitled cause as follows:

1. The District Court erred in failing to find and determine that the deceased, Martin W. Firth, being at the time of his death an employee of the United States as a member of the civil service component of the United States Army Transport Clarksdale Victory, his administratrix was entitled as the personal representative of such employee, to the benefits under the Federal Employees Compensation Act of 1916, 39 Stat. 742, 5 U. S. Code, Sec. 751, et seq.

2. The District Court erred in failing to find and conclude that the benefits available to the libellant, under the Federal Employees Compensation Act of 1916, 5 U. S. Code, Section 751, et seq., are of such a nature as to preclude recovery in this action by the libellant.

3. The District Court erred in failing to find and determine that the Federal Employees Compensation Act is the exclusive remedy of libellant herein.

4. The District Court erred in finding and concluding that the respondent, United States, has consented to be sued herein for the death of Martin



W. Firth, occasioned during his employment as a member of the civil service component of the United States Army Transport Clarksdale Victory, under the general admiralty and maritime law and other laws and statutes of the United States pertaining hereto, and specifically the Public Vessels Act, 46 U.S.C. 781, and Suits in Admiralty Act, 46 U.S.C.A. 741.

5. That the District Court erred in finding and concluding that the libelant was entitled to recover the sum of \$15,000.00 herein.

6. That the District Court erred in entering decree against respondent for \$15,000.00.

7. That the District Court erred in denying the motion of respondent to vacate its judgment herein and dismiss the libel.

/s/ CHAUNCEY TRAMUTOLO,  
United States Attorney;

/s/ KEITH R. FERGUSON,  
Special Assistant to the  
Attorney General.

[Endorsed]: Filed September 9, 1952.

In the District Court of the United States for the  
Northern District of California, Southern  
Division

No. 25428

Before: Hon. George B. Harris, Judge.

MURIEL FIRTH,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Respondent.

REPORTER'S TRANSCRIPT

Appearances:

For the Plaintiff:

HOWARD BERGMAN, ESQ.,  
STEWART HARRISON, ESQ.

For the Respondent:

WILLIAM J. O'BRIEN, ESQ.,  
SAMUEL L. CRIPPEN, ESQ.

MURIEL FIRTH

called as a witness on her own behalf, sworn.

The Clerk: Please state your name, your address and your occupation, if any, to the Court.

A. Muriel Firth, 305 Stanford Street, Tacoma, Washington, secretarial work.

(Testimony of Muriel Firth.)

Direct Examination

By Mr. Crippen:

Q. Mrs. Firth, are you the widow of Martin W. Firth?           A. Yes.

Q. What is your present age, Mrs. Firth?  
A. 25.

Q. You are 25 now?           A. That is right.

Q. As a result of your marriage with Mr. Firth, do you have any children?           A. Yes, one.

Q. And her name?           A. Barbara Louise.

Q. And her age, please?           A. Four.

Q. At the time of Mr. Firth's death—by the way, what was his date of death? [2\*]

A. Let's see, I guess it was November 22.

Q. Wasn't it the 24th?

A. Something in there.

Q. Did Mr. Firth die as a result of the stranding of the Clarksdale Victory?           A. Yes.

Q. November 24, 1947. How old was your daughter at that time?           A. Just one year.

Mr. Crippen: One year old. Would you mark this, please?

(Thereupon, the Clerk marked the document above referred to.)

Q. (By Mr. Crippen): Handing you libelant's identification—I can't make out this number, Mr. Magee.

The Clerk: 33 for identification.

Q. (By Mr. Crippen): Libelant's 33 for iden-

\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of Muriel Firth.)

tification. Will you tell the Court what that is, please? A. It is a death certificate.

Q. Of whom? A. Martin W. Firth.

Q. Thank you. I offer this as libelant's exhibit, your Honor, the death certificate of Martin W. Firth.

The Court: I assume it is a copy. Is there any dispute about the fact of death?

Mr. Bergman: None, your Honor, but that would appear to [3] be wholly hearsay evidence of a person who made it out. I don't know what the offer is made for.

Mr. Crippen: You mean that he will not stipulate that that is an official death certificate, Mr. Bergman?

Mr. Bergman: No, I don't mean that at all. That isn't what I have objection to. It is the cause of the death. It contains other information, your Honor, unrelated to the cause of the death which obviously would make it——

Mr. Crippen: So far as the other information is concerned, your Honor, it is not offered for that. It is merely offered as an official certificate of death and for that purpose alone.

The Court: And to prove the fact. Counsel stipulates to the fact of death, isn't that true?

Mr. Bergman: I agree, your Honor, that the deceased died as a result of the loss of the Clarksdale Victory.

The Court: As the proximate result of the loss of the ship.

(Testimony of Muriel Firth.)

Mr. Bergman: Proximate direct result.

The Court: It may be marked for identification.

The Clerk: Libelant's exhibit 33 for identification.

(Thereupon, the document above referred to was received and marked libelant's exhibit number 33 for identification.)

Q. (By Mr. Crippen): Mrs. Firth, following the death of [4] Martin W. Firth were you duly and regularly appointed the administratrix of the estate of Martin W. Firth in Pierce County, Washington? A. Was I appointed?

Q. Yes. A. Yes.

Mr. Crippen: As I understand it, the Government refused to stipulate on this, so I have an exemplified copy, your Honor. I show this to you, counsel, an exemplified copy of Letters of Administration.

Q. (By Mr. Crippen): Were you appointed administratrix of the estate of your husband, Mr. Firth, on March 8, 1948, as set forth in that exhibit?

A. Yes, I was.

Mr. Crippen: I offer certificate of appointment and an exemplified copy of Letters of Administration from State Courts of Pierce County, Washington.

Mr. Bergman: No objection.

The Court: They may be received and marked.

The Clerk: Libelant's exhibit 34 in evidence.



(Testimony of Muriel Firth.)

(Thereupon, the documents above referred to were received in evidence and marked libelant's exhibit number 34.)

Mr. Crippen: I offer in evidence now, your Honor, libelant's identification number 35, which is a birth certificate of Martin W. Firth, showing his birth to be [5] November 19, 1924, at Tacoma, Pierce County, Washington.

The Court: It may be marked.

Mr. Bergman: No objection.

The Clerk: Libelant's exhibit 35 in evidence.

(Thereupon, the document above referred to was received in evidence and marked libelant's exhibit number 35.)

Mr. Crippen: I now offer in evidence certificate of birth of the witness, Mrs. Muriel Firth, showing her birth to be December 24, 1925, in Chicago, Illinois, your Honor.

The Court: It may be marked in evidence.

The Clerk: Libelant's exhibit 36 in evidence.

(Thereupon, the document above referred to was received in evidence and marked libelant's exhibit number 36.)

Q. (By Mr. Crippen): Mrs. Firth, were you married on December 13, 1945, to Martin W. Firth?

A. Yes.

Q. Where was that marriage?

A. Tacoma, Washington.



(Testimony of Muriel Firth.)

Q. Tacoma, Washington? A. Yes.

Mr. Crippen: I offer in evidence libelant's identification number 38, being a photostatic copy of the certificate of marriage, your Honor.

The Court: It may be marked.

The Clerk: Libelant's exhibit 38 in evidence. [6]

(Thereupon the document above referred to was received in evidence and marked libelant's exhibit number 38.)

Mr. Crippen: This is the birth certificate of the child.

Q. (By Mr. Crippen): Handing you libelant's identification number 37, Mrs. Firth, what is that, please?

A. It is the birth certificate of my daughter.

Q. Of your daughter? A. Yes.

Q. And her name?

A. Barbara Louise Firth.

Q. And what was the date of her birth?

A. November 8, 1946.

Q. November 8, 1946? A. Yes.

Mr. Crippen: I offer libelant's identification number 37 in evidence, your Honor.

The Court: It may be marked.

The Clerk: Libelant's exhibit 37 in evidence.

(Thereupon the document above referred to was received in evidence and marked libelant's exhibit number 37.)

Q. (By Mr. Crippen): Had your husband been in the Army services, Mrs. Firth? A. Yes.

(Testimony of Muriel Firth.)

Q. Over what period of time was he in the [7] Army?

A. Oh, let's see. Well, he left school about when he was 15 or 16 and went into the regular Army, and he was in there until his mother finally got him out. After he got out he was redrafted into the Services and he was discharged in 1945, I believe.

Q. He was discharged how long before your marriage on December 13 of 1945?

A. Approximately a week.

Q. Approximately a week prior to that time?

A. Yes.

Mr. Crippen: I now offer in evidence the libelant's identification 39 and 40 showing—which constitutes an Honorable Discharge from the Army with the pertinent facts thereon; offer that in evidence as the next exhibit.

The Court: So ordered.

The Clerk: Libelant's exhibits 39 and 40 in evidence.

(Thereupon the documents above referred to were received in evidence and marked libelant's exhibits numbers 39 and 40, respectively.)

Q. (By Mr. Crippen): So that up until a week prior to your marriage Mr. Firth had been in the Army? A. Yes.

Q. Will you tell the Court what work Mr. Firth did following your marriage, to the best of your recollection, in the early part of 1946? [8]

A. Well, he didn't do too very much. He didn't

(Testimony of Muriel Firth.)

quite get settled down, and he did take employment at the shipyards for a while.

Q. Where was that?

A. In Tacoma, Washington. And he was employed there until they terminated him, they were cutting down on their crews at that time, so it wasn't over a great period of time he was employed. He took various other jobs, never settling down to one job exactly. He received compensation from the Government on the Veterans—well, his Veteran—I don't know.

The Court: Disability? Was he disabled?

A. No, not disability.

Q. (By Mr. Crippen): Well, it was the Veterans 5221 compensation for unemployment?

A. That is correct.

Q. Mr. Firth worked at the shipyards until that plant closed, did he?

A. Until he was laid off there, yes.

Q. That was at Tacoma?

A. Yes, Tacoma.

Q. Now, in the early part of 1947 was Mr. Firth employed, Mrs. Firth?

A. The early part of '47?

Q. 1947. [9] A. Let's see——

Q. Well, to refresh your recollection, when did Mr. Firth go to Alaska?

A. Oh, well, he went up to Alaska in June.

Q. Of what year? A. Of 1947.

Q. And prior to going to Alaska in June of 1947,

(Testimony of Muriel Firth.)

the preceding months of that year had he been employed?

A. Yes, he was employed for a time in Tacoma, DuPont Company.

Q. The DuPont Nemours Company?

A. That is correct.

Q. Handing you libelant's—pardon me.

(Thereupon Mr. Crippen showed the above-mentioned document to Mr. Bergman.)

Q. (By Mr. Crippen): Mrs. Firth, handing you libelant's identification number 41 which purports to be a certified copy of an income tax return filed by you following the death of your husband for his estate, I will ask you if that is a joint return wherein some earnings there are listed separately to you?

A. It is a joint return, yes.

Q. And what item there is your earnings?

A. Tacoma Metal Products Company, \$907.50.

Q. Is the balance of the return and the items listed there the earnings of your husband? [10]

A. The balance, yes.

Q. Is there any item there representing employment for the year 1947 prior to June when your husband went to Alaska?

A. There is an item, yes; the DuPont Company.

Q. One item? A. Uh-huh.

Q. What does that show, please?

A. The I. DuPont Company, Tacoma, \$81.98.

Q. Did you compile this return of your husband's earnings from slips and records received by

(Testimony of Muriel Firth.)

you from his employers showing the amounts received by him?      A. That is correct.

Q. The principal item here appears to be Ocean Tow, Incorporated. Was your husband employed by that company?      A. That is right.

Q. That is a Seattle company, is it?

A. I believe it was a Seattle company.

Q. Where was his employment with them, however?      A. In Whittier, Alaska.

Q. That is an item of \$1,369.84. Can you tell us what period of time that is for?

A. Yes, it was, I believe, from September up until the time he left.

Q. Did you receive a letter from the company, Ocean Tow Company, setting forth his rate of pay and the period of time [11] during which he worked for them that he earned the \$1,369.84?

A. Yes, I believe I did.

Mr. Bergman: Was the last exhibit offered in evidence?

Mr. Crippen: I haven't as yet. I am going through the items first.

Q. (By Mr. Crippen): Is this a copy of the letter directed to Commander Bergman confirming your husband's earnings, the rate and the period of time received by you?      A. Yes.

Q. Would you read that, please?

A. "At the request of counsel for Muriel Firth, Ocean Tow, Inc., furnishes the following information:

"Our records show that Martin W. Firth was



(Testimony of Muriel Firth.)

employed by Ocean Tow, Inc., on September 8, 1947, as a longshoreman at Whittier, Alaska, working for this company until the 22nd day of November, 1947.

“His rate of pay was \$1.62 per hour and his earnings while in our employ totaled \$1,369.84.”

Q. So that the \$1,369.84 was earned in a period of two and a half months employment with the Ocean Tow Company?           A. That is correct.

Mr. Crippen: I will offer that in evidence, your Honor.

The Court: So ordered.

The Clerk: Libelant's exhibit 42 in evidence.

(Thereupon the document above referred to was received [12] in evidence and marked Libelant's exhibit number 42.)

Q. (By Mr. Crippen): The other items of earnings here listed by you on your income tax return for the estate of your husband are Myrtle and Green and Mathis at Anchorage, \$47.85. That was sometime during the fall before he went to work for the Ocean Tow?           A. That is right.

Q. And Morrison Knudsen Company, that was also Alaska?           A. Uh-huh.

Q. That shows an item of \$194.00 and the War Department, Alaska, Department A, item of \$173.50. Was that in the fall of the year, those earnings in Alaska?           A. Yes.

Q. And Birch and Sonos, \$140.29?

A. That is right.

(Testimony of Muriel Firth.)

Q. Similarly true of that item?

A. That is correct.

Mr. Crippen: I will offer in evidence certified copy of the return of Mrs. Firth for the estate of Martin W. Firth.

The Court: So ordered.

Mr. Bergman: Objected to, your Honor, on the ground that insofar as the earnings of the deceased is concerned it is a self-serving declaration on the part of the libelant.

Mr. Crippen: If your Honor please, at our pre-trial at counsel's suggestion—— [13]

The Court: Objection overruled.

The Clerk: Libelant's exhibit 41 in evidence.

(Thereupon the document above referred to was received in evidence and marked libelant's exhibit number 41.)

Q. (By Mr. Crippen): Mrs. Firth, on January 3, or in the month of January, 1949, did you receive from a branch of the Government of the United States what I now hand you and which is marked Libelant's identification number 43? A. Yes.

Q. Will you read the statement here addressed to you?

Mr. Bergman: To this I object, your Honor, until the document is introduced as evidence and admitted.

The Court: What is this?

Mr. Crippen: I will have to inform the Court what it is before it can be admitted, your Honor.

(Testimony of Muriel Firth.)

Mr. Bergman: That is all right.

Mr. Crippen: Your Honor, this is a statement to a letter addressed to Mrs. Firth enclosing a check which is declared to be amount due Martin W. Firth as an employee of the War Department, referring to being aboard the Clarksdale Victory and so forth from the Government.

The Court: What is the purpose of this?

Mr. Crippen: To show that he was an employee aboard the Clarksdale Victory, your Honor.

The Court: No one disputes that. [14]

Mr. Crippen: I understood that was not waived by the Government, although unofficially agreed to.

Mr. Bergman: I stated at the pre-trial, your Honor, that I agreed that two workaways were workaways and went no farther.

The Court: All right, I will accept it.

Mr. Bergman: I should like to object to it, your Honor, on the ground that it is incompetent evidence for the purpose of proving——

The Court: May I see it?

Mr. Bergman: The fact that the workaway was employed by the authority of the respondent——

The Court: By the authority of whom?

Mr. Bergman: By the authority of the Master of the vessel, and that that instrument cannot bind the Government in respect of a contract of employment if made on or about the 22nd of November, 1947.

Mr. Crippen: It is a strange situation when the Government wishes to keep out of evidence their

(Testimony of Muriel Firth.)

own correspondence, officially marked files, and addressed to this libelant.

Mr. Bergman: That instrument, your Honor, was made by the War Department to the widow, at least I represent this to your Honor at a time when matters of compensation, war risk insurance, things of that matter were being contemplated. [15] It is one thing for the War Department to construe or acknowledge that a person is classed as a certain— classed in a certain manner for compensation or war risk insurance, and entirely a different matter to consider that they are classed as an employee, for example, within the meaning of the Jones Act.

The Court: Well, if they be regarded as a circumstance in the offer of proof. I will allow it.

The Clerk: Libelant's exhibit 43 in evidence.

(Thereupon the document above referred to was received in evidence and marked libelant's exhibit 43.)

Q. (By Mr. Crippen): Mrs. Firth, what was the purpose of your husband going to Alaska?

A. Well, he couldn't find employment in Tacoma and he went up there to get a little money ahead so he could buy a house.

Q. So he could buy a house for you and the baby? A. And for my daughter.

Q. Did you have a conversation with him by radio-telephone prior to his leaving on the Clarksdale Victory? A. Yes, I did.

Q. When was that?

(Testimony of Muriel Firth.)

A. I think it was the Thursday before the boat sailed. I think the boat left Saturday.

Q. What was the nature of that conversation?

Mr. Bergman: Objected to, for the moment, your Honor, [16] as immaterial unless some offer is made with respect to what is shown it would seem to be quite incompetent.

Mr. Crippen: I will change that with a preliminary question.

Q. Did your husband indicate to you at that time any employment in Tacoma causing him to desire to return? A. Yes, he did.

Mr. Bergman: Objected to, your Honor, as wholly incompetent.

The Court: Overruled.

Mr. Crippen: You may answer, Mrs. Firth.

A. He indicated to me that he had received a letter from his father stating that he probably could get into the union whereas he could get employment driving. It was the Teamsters Union.

Mr. Bergman: What union?

A. The Teamsters Union.

Q. (By Mr. Crippen): Was there any statement regarding earnings as compared with his earnings in Alaska?

Mr. Bergman: Objected to, your Honor, if this is a statement of what the father said might happen.

The Court: Objection sustained.

Q. (By Mr. Crippen): Was any statement made by your husband during the conversation re-



(Testimony of Muriel Firth.)

garding the accumulation of earnings or anything of that nature? [17]

A. Well, he just mentioned that he thought he had enough up there—a reasonable amount to put down on a house with the assistance of a Government loan and that he would come back to the States with this, that is all.

Q. Mrs. Firth, since your husband's death, how have you supported yourself?

A. I have been working ever since.

Q. What work are you doing there in Tacoma?

A. Secretarial work.

Q. What are your hours of work?

A. 8:30 until 5:00.

Q. Do you support your baby by Mr. Firth, Barbara Firth? A. Yes.

Q. And who cares for her while you are working?

A. Right now she is in the nursery. She is there all day until I pick her up after work.

Q. You take her there before you go to work and pick her up at night?

A. I take her there in the morning.

Q. Have you received at any time any amount, anything whatsoever from the Government with respect to war risk insurance or anything of that nature? Have you accepted anything whatever?

A. I have never accepted anything.

Mr. Bergman: Objected to as immaterial. [18]

Mr. Crippen: Those matters are considered by

(Testimony of Muriel Firth.)

the Court in the event of a judgment in determining what, if anything, has been received.

Mr. Bergman: They ought not to be considered, your Honor.

The Court: Has she received any money from the Government at all in connection with the loss of her husband?

Mr. Crippen: That was my question.

Q. Have you? A. No.

Q. You have received nothing?

A. Nothing.

Q. Mrs. Firth, have you remarried since the death of your husband? A. No, I have not.

Q. Have no contemplation of any remarriage?

A. No, not at the present.

Q. Mrs. Firth, did your husband during his lifetime make every effort to support you and to contribute toward the support of yourself and baby?

A. To the best of his ability.

Mr. Bergman: Objected to as conclusion, your Honor. The facts will speak for themselves.

The Court: That probably is a conclusion.

Q. (By Mr. Crippen): Did he while employed and from funds [19] he received of any nature support you and your baby? A. Well——

Mr. Bergman: Objected to, your Honor, for the same reason, that that is vague, asks for a conclusion of what the facts are.

Q. (By Mr. Crippen): Did he bring his money home, pay the bills? A. Of course.

Q. For yourself and baby? A. Yes.

(Testimony of Muriel Firth.)

Q. Was there any other purpose in his going to Alaska other than to get funds to support you and the child?      A. No.

Mr. Bergman: That is leading.

The Court: Overruled.

Q. (By Mr. Crippen): Mrs. Firth, was your husband—what was the state of your husband's health?      A. He was in perfect health.

The Court: How old was he at the time of his death?

Q. (By Mr. Crippen): At the time of his death, Mrs. Firth, what was your husband's age?

A. I believe he had just turned 22.

Q. He was 22 one week before his death?

A. I believe that is right.

Q. And your age at that time was what? [20]

A. 20.

Q. What is the condition of your health, Mrs. Firth?      A. I am in good health.

Q. Very good?      A. Uh-huh.

Q. Were you and your husband affectionate and looking towards the future, planning your family, or had there been any difficulty? Was the home a strong one, your bond and relationship between yourself and your affection for him?

A. I thought it was, yes.

Mr. Crippen: I think that is all.

The Court: Are there any questions by counsel for the Government?

Mr. Bergman: Yes, your Honor. I anticipate

(Testimony of Muriel Firth.)

that they might be some length. I would suggest that we commence this afternoon.

The Court: We will resume, then, at 2:00 o'clock.

(Thereupon Court was recessed until 2:00 o'clock p.m.)

### CERTIFICATE OF REPORTER

I, Joan Perkins, Official Reporter and Official Reporter pro tem, certify that the foregoing transcript of 21 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting, to the best of my ability.

/s/ JOAN PERKINS. [21]

Friday, March 30, 1951. 2:00 P.M.

The Court: You may cross-examine the lady.

Mr. Crippen: Mrs. Firth, will you take the stand?

### MURIEL FIRTH

plaintiff herein, resumed the stand and being previously sworn, testified further as follows:

### Cross-Examination

By Mr. Bergman:

Q. Miss Firth, I understood you to say you were born in the East. Was it Chicago?

A. Chicago.

Q. And lived there about how long?

(Testimony of Muriel Firth.)

A. About eighteen years, nineteen.

Q. You attended school there? A. Yes.

Q. Are your parents now living?

A. My mother is.

Q. Your father?

A. My father is deceased.

Q. Passed on? About when did you meet Martin Firth, your deceased husband?

A. In about June or July of 1945.

Q. He was then in the Army, was he?

A. Yes, he was stationed at Fort Sheridan, Illinois, in the [2\*] Army.

Q. Then where was he released from the Army?

A. He was released at Fort Lewis, Washington.

Q. Do you know approximately when he was transferred to Fort Lewis?

A. Oh, I would say in October, I think, September or October; I am not sure.

Q. Did you move to Tacoma then for the purpose of the marriage?

A. He asked me to come out to Tacoma to get married, yes.

Q. You came to Tacoma alone? A. Yes.

Q. Your mother staying in the East, is that right?

A. That is right. My folks stayed East.

Q. You were married—was it on the 14th of December, 1945? A. The 13th.

Q. 13th of December, 1945?

A. That is right.



(Testimony of Muriel Firth.)

Q. And Mr. Firth was discharged a few days later?

A. He was discharged earlier, a week earlier.

Q. Oh, a week before that? You were married a week after he got out of the Service?

A. That is correct.

Q. Were his parents then living? A. Yes.

Q. Were they then living at the time of your marriage—where [3] were they living?

A. In Tacoma, 1623 East 61st Street, Tacoma, Washington.

Q. Where did you and your husband live immediately after your marriage?

A. We had an apartment and we lived on 11th, and I can't tell you the exact address—11th and G Street, in Tacoma.

Q. You moved there how long after you were married? A. Oh, a couple of days after.

Q. Just a couple of days? A. Yes.

Q. How long did you live there?

A. Until May. I went back to Chicago in May. My dad died and I left and went back to Chicago.

Q. You lived at the address to which you moved when you were married from the time of the marriage until May of 1948? A. No, 1946.

Q. Oh, May, 1946. A. Yes.

Q. I believe you stated your husband worked in a shipyard early in '46?

A. Yes, I believe that is correct.

Q. He went to work there either the last day of 1945, or the first day of 1946, didn't he?

A. Yes, beginning of the year.

(Testimony of Muriel Firth.)

Q. And left that employment on the 6th of February, is that [4] correct?

A. I don't know exactly when, but he left there not too—you know, within a reasonable length of time.

Q. Well, he worked there about a month?

A. I guess that is right.

Q. Then, if you recall, where did he next work?

A. I think he started for either the Union Taxi Company or Tacoma Drug Company, either of them.

Q. Would it be true he commenced to work for the Tacoma Drug about the 2nd of March?

A. Could be, yes.

Q. And worked until the 23rd of March?

A. I guess so. I couldn't tell you offhand.

Q. Would that be about right?

A. I imagine.

Q. Would it be true that he earned approximately \$100 during that period of time?

A. I can't remember that far back.

Q. Do you remember, then, where he next went to work after he left the Tacoma Drug?

A. Well, I think after that it was—it must have been the Union Taxi Company.

Q. Where was the Union Taxi Company located? Tacoma? A. In Tacoma.

Q. He worked there, didn't he, just from the 14th of April [5] till the first of May?

A. That is right.

Q. And during that time he earned \$100 a month?

A. I guess so. I don't know. I imagine.

(Testimony of Muriel Firth.)

Mr. Crippen: If you don't know, Mrs. Firth, just answer that, if you don't recall.

A. All right.

Q. (By Mr. Bergman): Do you know whether or not your husband, Mr. Firth, contributed to your support during those first four months of the marriage?

A. Oh, yes, definitely.

Q. Do you know how much?

A. Well, he gave me whatever he made.

Q. Were you working then?

A. For four months, yes.

Q. At the time of the marriage you were working?

A. No.

Q. What occasioned the move to Chicago?

A. My dad passed on.

Q. The death of your father?

A. Yes.

Q. What is business, or employment, if any, at the time of his death?

A. My father's?

Q. Yes. [6]

A. He was a meat cutter—butcher.

Q. Then you went to Chicago and stayed how long?

A. I think until the end of September, October.

Q. 1946?

A. That is right.

Q. Mr. Firth didn't work in Chicago, did he?

A. No, he came out there merely to help me move back to Tacoma. We were intending to stay out here.

Q. And you got back here in September?

A. Well—

Q. Approximately?

A. Approximately September or October, first part of October.

(Testimony of Muriel Firth.)

Q. From September until the end of the year Mr. Firth didn't work, did he?

A. Well, now, I wouldn't say he did. I don't think so. I don't recall.

Q. Actually, then, in the calendar year, 1946, he didn't earn over \$350 did he?

A. Well, besides his Government compensation that he got. I mean, at that time there was no employment to be had unless you were skilled, a professional man, and there was just no opportunities at that time.

Q. But I say he didn't earn over \$350, did he, in 1946?      A. That is right. [7]

Q. Referring to the income tax return which you prepared for 1947, libellant's Exhibit No. 41, there are five items of income apparently made by your husband. Outside of that, of what he earned in Alaska, would those, according to the information, represent all the sums he earned for that year?

A. Yes.

Q. In other words, everything that he earned in 1947 is stated on his 1947 income tax return?

A. That is right.

Q. I believe you stated your husband went to Alaska in June of 1947?      A. That is right.

Q. For the reason that he didn't indicate employment in Tacoma?

A. There was no employment for an unskilled person and he went up there to get enough money to buy a house.

Q. Where were you living at that time?

(Testimony of Muriel Firth.)

A. I was living in Tacoma. I don't know the exact address. I think it was 1205 East Sixty Second, Tacoma.

Q. That is, at the time of your husband's departure for Alaska?      A. Well, we moved—

Q. Perhaps I had better go back, if I may, Mrs. Firth, to the time you returned to Tacoma from Chicago. You returned to Tacoma in September, 1946? [8]      A. Yes.

Q. With your husband?      A. Yes.

Q. Where did you live then when you got back?

A. Maybe that was the address—I know we moved right before he went up to Alaska to a different address.

Q. Didn't you live in a housing project there in Alaska—I mean in Tacoma?

A. In Tacoma after he had died.

Q. That was 81 Prosser Street?

A. That is correct.

Q. When did you move there?

A. May of the following year.

Q. May following the death of your husband?

A. Let's see, the following May. He died in November, so it was the following May.

Q. Where did you go when you got back to Tacoma with your husband after returning from Chicago, where did you live then?

A. I think it was either at 61st Street or 60th Street, I don't recall.

Q. Do you recall the address?

A. No, I don't.



(Testimony of Muriel Firth.)

Mr. Crippen: If your Honor please, I think it is rather immaterial. [9]

The Court: Counsel may have some purpose.

Q. (By Mr. Bergman): Well, I will ask then what type of dwelling was it at which you then moved, an apartment house or what type of home?

A. When he went up to Alaska?

Q. When you returned to Tacoma from Chicago.

A. Oh, it was a pretty nice home. I mean it was——

Q. A separate house? A residence dwelling?

A. It was a residence dwelling, that is correct.

Q. How many rooms? A. Oh, about five.

Q. You were renting then?

A. No, we were intending to buy.

Q. When you moved into it, did you rent it?

A. No, my mother gave us enough money for the down payment and we intended to go on from there paying the rent.

Q. Do you recall when that was you moved into that house?

A. In about the end of October or November.

Q. October or November, 1946?

A. That is right.

Q. How much were the monthly payments to be made following your making the down payment, as near as you recall?

A. About \$50, approximately, a month.

Q. From the time of your return to Tacoma from Chicago until the time your husband went to Alaska, that is, from about [10] September, 1946,

(Testimony of Muriel Firth.)

until about June, 1947, what is your estimate of the amount of money which Mr. Firth contributed to your support?      A. I can't estimate.

Q. Did he——

A. (Interposing): Whatever he made he gave to me.

Q. Did he smoke?

A. Did he smoke? Yes.

Q. Take an occasional drink now and then?

A. That is right.

Q. What is your estimate as to how much money would be spent, for example, for liquor and cigarettes during this time?

A. It would be a small amount. He didn't have that much to spend on anything like that.

Q. Did he smoke as much as a package of cigarettes a day?      A. Approximately.

Q. As many as one pack?

Mr. Crippen: Your Honor, please, I object to this line of questioning. I think it is improper and getting too infinitesimal.

The Court: Overruled, sir.

Q. (By Mr. Bergman): If you recall, did your husband smoke as much as two packages of cigarettes a day?

A. No, I would say about a package.

Q. Would you say as much as \$25 a month were spent for, say, [11] liquor and cigarettes?

A. I wouldn't say, I don't know.

Q. Your husband was obviously unable to take

(Testimony of Muriel Firth.)

care for your support out of his income alone, wasn't he?

A. Well, he was unable to if he didn't have a job, he couldn't get a job.

Q. I just mean the fact in itself, Mrs. Firth, that he did not, regardless of the cause, support you entirely?

A. That is right.

Q. There must have been other sources of support, surely? That is true, isn't it?

A. Yes.

Q. Then in September of 1947, Mr. Firth went to Alaska in order to save up some money, I believe you said?

A. In June he went to Alaska.

Q. In June, 1947?

A. I believe that is right.

Q. He later told you on the telephone, before starting to come back, he thought he had enough money to make a down payment on a house?

A. Yes.

Q. Where were you living then at that time when he commenced his return back to the United States?

A. Well, it wasn't at that other address, because we had moved—it was either at—I don't know—14- or 1601-62nd. [12]

Q. Were you still living in the house?

A. Not the same house.

Q. The house on which your mother had made a down payment?

A. No.

Q. You had moved?

A. Yes.

(Testimony of Muriel Firth.)

Q. How much of a down payment did she make, if you recall?

Mr. Crippen: I object to that as immaterial, what her mother may have done.

The Court: Overruled.

Q. (By Mr. Bergman): Do you recall approximately how much? A. About \$900.

Q. About \$900? While he was in Alaska did your husband send you down any money from time to time? A. I didn't ask him to.

Q. Was it for that reason that he didn't?

A. That is right. I took on a job myself at that time, and I figured he probably needed all he earned up there to get along on and save for a house, and I was doing all right down here.

Q. It was because of the fact that living expenses are very high in Alaska that you assumed he would need all the money he earned himself?

A. That is right.

Q. Do you recall now what assets were listed in the estate, [13] probate proceedings of your husband?

A. There were no assets. There was no insurance.

Q. No insurance, no cash, no nothing?

A. No.

Q. You commenced to work, yourself, in the Tacoma Metal Products in June of 1947?

A. That is right.

Q. And your baby was then about——

A. Six months.

(Testimony of Muriel Firth.)

Q. Six or seven months old? She was born in November, 1946? A. That is right.

Q. At the time of the birth of your baby, where were you then living?

A. At the previous address on 61st, I think it was.

Q. On 61st Street? A. Yes, I think so.

Q. In Tacoma? A. Yes.

Q. Do you recall the number?

A. I think it was 1205. I am not sure.

Q. Do you recall what the cross street might have been, if that number is wrong?

A. No. It was about three blocks off of McKinley, is all I could tell you.

Q. This is the home on which your mother had made the down [14] payment?

A. That is right.

Q. Who was there living in the home in addition to yourself at that time? This is at the time of the birth of your baby.

A. My mother and my husband.

Q. How long, then, did you continue to live at that place, Mrs. Firth?

A. Until that May, of 1947.

Q. Until the following—until May, 1947?

A. That is right.

Q. Where did you then move?

A. It was on the 62nd Street address. It was just about a block away.

Q. And you lived there how long?

A. A year.



(Testimony of Muriel Firth.)

Q. May, 1948, to May, 1949? A. Yes.

Q. And then where did you live?

A. We moved to the housing project.

Q. Housing project? A. Yes.

Q. On what date, approximately?

A. I think it was the following May.

Q. Then we would be getting into May of 1949?

Mr. Crippen: 1948. [15]

A. I don't know. About that, I guess.

Q. (By Mr. Bergman): Couldn't it be, Mrs. Firth, you moved into the housing project in April or May of 1947—1948, just some about four months following the death of your husband?

A. Well, what did you say? In April or May?

Q. Yes. Isn't it true it was only three or four months, which would put you to April, say, of 1948, that you moved into the housing project?

A. It is possible. I couldn't remember offhand. They are all very closely related dates.

Q. Well, you can recall whether or not it was some four months following the death of your husband that you moved into the housing project?

A. It must be.

Q. That would be correct?

A. It would be correct, I guess.

Q. Then who moved into the housing project with you?

A. My mother and my brother-in-law moved in with me.

Q. What is his name? A. Eugene D. Firth.

Q. How old a man is he?

(Testimony of Muriel Firth.)

A. He is younger than I am. A year younger than I am.

Q. How long did you continue to live there? Is it correct—excuse me—is it correct to refer to it as a housing project? A. Yes. [16]

Q. What type of family accommodation was it? How many rooms, and so forth?

A. There was a living room, dinette, and two bedrooms.

Q. Is it quarters in a large building?

A. No, they are individual—oh, this was a duplex.

Q. A duplex? A. Yes.

Q. How long, as well as you remember, did you live there?

A. If I moved there in May, I stayed there a year.

Q. Then you would have moved out in May, 1949? A. That is right.

Q. Do you recall what the rental was there?

A. \$25.

Q. Then to where did you move in May of 1949?

A. I moved to my present address, 305 Stanford Street.

Q. Who else, if anyone, lives there with you now? A. The same parties.

Q. Your brother-in-law, Eugene Firth, lives there? A. Yes, he is.

Q. Does he contribute in any way to the support of the home?

Mr. Crippen: Your Honor please, I renew my

(Testimony of Muriel Firth.)

objection, particularly, for the record here. This is entirely immaterial, counsel's questions.

Mr. Bergman: I understand the rule to be, your Honor, that sources of other income are one factor to consider in the [17] award.

Mr. Crippen: Her present income is immaterial.

The Court: Her present income would be immaterial, counsel. The factors concerned are his earning capacity, his ability to provide for this lady, and the surrounding facts and circumstances are relevant and material; but her present means and sources of income, I can't see at this time would aid the Court in making a determination at all in making an award.

Mr. Bergman: Very well, your Honor.

Q. Had Eugene Firth helped out in your expenses in any way prior to the death of your husband?

A. No. He wasn't even in Tacoma at that time.

Q. Do you know where he was? A. Yes.

Mr. Crippen: I object on the ground, immaterial where her husband's brother might have been prior to her husband's death.

The Court: Overruled.

Q. (By Mr. Bergman): Do you know where he was?

A. Yes, he was in the Navy down in San Diego or San Francisco here.

Q. At the time of the death of your husband?

A. Yes. Well, at the exact time of death he was

(Testimony of Muriel Firth.)

just, had been discharged about two or three weeks from the Navy. [18]

Q. At the time of the death of your husband?

A. Yes.

Q. He had been discharged from the Navy and moved back to Tacoma? A. Yes.

Q. I understood you to say, Mrs. Firth, that at the time your husband went up to Alaska, that you had a conversation with him about the purpose of his going up, is that right? A. Yes.

Q. He was going up to try to get money to make this down payment? A. That is right.

Q. At the time, based upon the help which Mr. Firth had been able to provide you, had you determined that something would have to be done about money matters or you just couldn't get along?

A. That is correct.

Mr. Crippen: I object on the ground the question is argumentative, your Honor, and not proper examination or cross-examination.

The Court: Overruled.

Q. (By Mr. Bergman): It was this fact that he had had a very hard time earning some money in Tacoma which caused him to go?

A. That is right.

Q. Was anything said about how long he would be there? [19]

A. All he said, he would be up there and just as soon as he would get enough money he would be back. He didn't determine how many months or years it would take.

(Testimony of Muriel Firth.)

Q. Nothing was said about how long it would take?

A. No, nothing was said about the time.

Q. Did you discuss how much money he would try to get together?

A. Well, reasonable amount for a down payment.

Q. Enough for the down payment?

A. Yes, and a little bit to carry us through until he would find employment down here.

Q. Would it be fair to say he went up to see if he could get together a thousand dollars or so?

A. I would say \$1,000, \$1,500.

Q. Had you, at that time, Mrs. Firth, stated to your husband in effect that if he couldn't get out and earn some more money you didn't think you could continue the marriage relation any more?

A. I never said that to anybody, no.

Q. You never at any time suggested that to him?

A. There was no reason to.

Q. But, unfortunate as the fact may be, he just simply was unable to support you, isn't that true?

A. It was impossible at that time, yes.

Mr. Bergman: I think that is all, your [20] Honor.

The Court: All right.

Mr. Crippen: That is all.

The Court: The witness is excused?

Mr. Crippen: Yes, your Honor.

The Court: Thank you.

(Witness excused.)



Certificate of Reporter

I, Official Reporter and Official Reporter pro tem, certify that the foregoing transcript of 21 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting, to the best of my ability.

/s/ KENNETH J. PECK. [21]

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO APOSTLES  
ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing documents are the originals, or true and correct copies of the originals, filed in this Court in the above-entitled case, and that they constitute the apostles on appeal herein as designated by the proctors for the appellant, with the exception of the reporter's transcript, which is not on file:

Seaman's Administratrix libel in personam.

Answer.

Opinion.

Findings of fact and conclusions of law.

Judgment.

Notice of appeal.

Order extending time to docket apostles on appeal.

Respondent's designation of apostles on appeal.

In Witness Whereof I have hereunto set my hand





[Endorsed]: No. 13524. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Muriel Firth, Administratrix of the Estate of Martin W. Firth, deceased, Appellee. Apostles on Appeal, Supplemental and Second Supplemental Apostles on Appeal. Appeal from the United States District Court for the Northern District of California, Southern Division.

Apostles on Appeal filed September 3, 1952.

Supplemental filed September 10, 1952.

Second Supplemental filed October 14, 1952.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

United States Court of Appeals  
for the Ninth Circuit

No. 13524

Excerpt from Proceedings of Monday, October 6, 1952.

Before: Stephens, Healy and Pope,  
Circuit Judges.

ORDER SUBMITTING AND GRANTING  
MOTION TO MAKE NEW PROOFS, ETC.

Ordered motion of appellant to make new proofs under Rule 38 of the Rules of this Court presented by Mr. Keith Ferguson, Special Assistant to the Attorney General, proctor for appellant, and by Mr. Wm. J. O'Brien, proctor for appellee, and submitted to the court for consideration and decision.

Upon consideration thereof, Further Ordered that said application be, and hereby is granted, and that the proffered documents consisting of authenticated documents of the Bureau of Employees Compensation, Federal Security Agency be, and hereby are filed as a supplemental apostles on appeal, with leave to counsel for appellee to object to consideration of said documents on the hearing of the cause on the merits.



In the United States Court of Appeals  
for the Ninth Circuit

No. 13,524

UNITED STATES OF AMERICA,

Appellant,

vs.

MURIEL FIRTH, Administratrix of the Estate of  
MARTIN W. FIRTH, Deceased,

Appellee.

APPELLANT'S STATEMENT OF POINTS TO  
BE RELIED ON ON APPEAL AND DESIG-  
NATION OF PORTION OF RECORD TO  
BE PRINTED

Appellant adopts as points on appeal the assign-  
ment of errors included in the Apostles on Appeal  
on file herein.

Appellant designates for printing the entire  
Apostles on Appeal as designated by the appellant  
on file herein, except that by stipulation on file  
herein the exhibits need not be printed and may  
be considered by the Court in their original form.

/s/ CHAUNCEY TRAMUTOLO,

United States Attorney,

/s/ LEAVENWORTH COLBY,

/s/ KEITH R. FERGUSON,

Special Assistant to the Attorney General, Proctors  
for Appellant, United States of America.

[Endorsed]: Filed October 15, 1952.

[Title of Court of Appeals and Cause.]

STIPULATION AS TO EXHIBITS

It Is Hereby Stipulated and agreed by and between appellant and appellees, acting by and through their respective proctors, that in order to save further cost of printing on exhibits heretofore admitted in evidence herein, said exhibits need not be printed and may be considered by the Court in their original form.

Dated this 14th of October, 1952.

/s/ CHAUNCEY TRAMUTOLO,  
United States Attorney,

/s/ LEAVENWORTH COLBY,

/s/ KEITH R. FERGUSON,

Special Assistant to the Attorney General, Proctors  
for Appellant, United States of America.

/s/ SAMUEL L. CRIPPEN,

/s/ CREIGHTON C. FLYNN,

/s/ WILLIAM J. O'BRIEN,

Proctors for Appellee, Muriel Firth, Admx. of  
Estate of Martin W. Firth, Deceased.

## ORDER

So ordered:

/s/ WILLIAM DENMAN,  
Judge, U. S. Court of Appeals  
for the Ninth Circuit.

/s/ WILLIAM HEALY,

/s/ WALTER L. POPE,

Judges, U. S. Court of Appeals for the Ninth Cir-  
cuit.

[Endorsed]: Filed October 16, 1952.